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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS HUMBERTO LOPEZ,

Defendant and Appellant.

D044530

(Super. Ct. No. SCE229123)

APPEAL from a judgment of the Superior Court of San Diego County, Herbert J. Exarhos, Judge. Affirmed.

Jesus Humberto Lopez pleaded guilty to two counts of first degree robbery (Pen. Code, §§ 211, 212.5, subd. (a))¹ and admitted using a deadly weapon in both robberies (§ 12022, subd. (b)(1)) and inflicting great bodily injury on the victim in one robbery (§ 12022.7, subd. (a)). The court denied Lopez's motion to withdraw his guilty plea, and

¹ All statutory references are to the Penal Code unless otherwise specified.

sentenced him to prison for 23 years 8 months. Lopez appeals, contending the court erred by denying his motion to withdraw his guilty plea. We affirm the judgment.

FACTS

Because Lopez pleaded guilty, the facts of this case are derived from the probation officer's report and prosecutor's summary of the facts. On August 7, 2001, Lopez met Richard Traver through mutual friends, who asked Traver to give Lopez a ride to the trolley. Traver stopped at his apartment to pick up some books and use the restroom. Lopez accompanied Traver into his apartment. He then stabbed Traver several times with a screwdriver, and took approximately \$15,000 worth of items, including jewelry, keys and a wallet, from Traver's home.

On September 20, 2002, Lopez met Dominic DiFilippe at an adult bookstore. The two men went to DiFilippe's residence and had sex. Lopez then took a hammer from DiFilippe's kitchen counter and struck him numerous times on the face and the back of the head. DiFilippe eventually wrestled the hammer away from Lopez and locked himself in the bathroom. After Lopez left, DiFilippe discovered his laptop computer, money, car keys and car had been taken.

DISCUSSION

Lopez contends the court abused its discretion when it denied his motion to withdraw his guilty plea. Lopez argues that because of his mental deficiencies and undermedicated condition on the date of the plea proceedings, he did not understand he was pleading guilty.

Procedural History

An information charged Lopez with six counts related to the two incidents. Counts 1 through 4 related to the 2002 incident; counts 5 and 6 related to the 2001 incident. The information charged Lopez with attempted murder (§§ 664, 187, subd. (a)) (count 1), first degree robbery (§§ 211, 212.5, subd. (a)) (counts 2 and 5), assault with a deadly weapon with force likely to cause great bodily injury (§ 245, subd. (a)(1)) (counts 3 and 6) and unlawful taking or driving a vehicle (Veh. Code, § 10851, subd.(a)) (count 4). Lopez pleaded guilty to counts 2 and 5, first degree robbery, and admitted allegations of inflicting great bodily harm (§ 12022.7, subd. (a)), using a deadly weapon (§ 12022, subd. (b)(1)), two prison priors (§ 667.5, subd. (b)), a prior serious felony conviction (§ 667, subd. (a)(1)) and a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12). At the plea hearing, the court explained the sentencing process, including a possible maximum prison term of 23 years 8 months. The court then asked Lopez whether he understood he was waiving his rights, and if he understood his sentence and the procedure that led up to the sentence. Lopez answered yes.

Lopez later moved to withdraw the guilty plea, claiming he mistakenly pleaded guilty because he was undermedicated for his mental deficiencies at the time and did not understand he was entering into a plea bargain. At the hearing on the motion to withdraw, Lopez testified he had regularly been taking five different medications for various mental and physiological problems, and as a result of those mental problems had

difficulty comprehending anything complicated.² He said that he could only understand "a little bit" of what was happening during the plea proceedings. He therefore signed the guilty plea form at his attorney's direction, and "looked to" his attorney for the answers to the court's questions during the plea hearing without realizing he was entering a guilty plea. After the plea hearing, Lopez believed he was still entitled to a trial.

The defense called Dr. Meyers, a clinical and forensic psychologist, as an expert witness. Before the hearing on the motion to withdraw, Dr. Meyers conducted a personal interview with Lopez to evaluate his mental state. She also reviewed the transcript of the plea proceedings and Lopez's medical charts from the detention facility where he was housed at the time. Dr. Meyers diagnosed Lopez with methamphetamine dependence, polysubstance dependence, bipolar disorder, and seizure disorder. She also testified that at the time of the interview, Lopez was somewhat agitated and restless, but he was also "clear" and "made sense," and showed no signs of severe mood disorder.

Dr. Meyers' review of the medical charts from the time of the plea hearing showed Lopez had not taken Seroquel the day before the plea proceedings, and had refused to take his medication on the day of the plea proceedings. Dr. Meyers testified it would be best for a defendant with bipolar disorder to enter into agreements while medicated. She said that discontinuing the use of Seroquel would "eventually" produce a decline in

² The medications Lopez testified to taking at the time were Seroquel (an anti-psychotic used to treat bipolar disorder), Dilantin (used to treat seizure disorder), Lithium (used to treat mood disorders), Tylenol (used as a pain reliever), and Prilosec (used to treat stomach ulcers).

mental faculties, but it was impossible for her to determine based on the transcript whether Lopez was unable to comprehend the proceedings. She also noted it is not uncommon for defendants to refuse their medication on the day of a court appearance.

The court found, based on its own observations of Lopez's behavior at the plea hearing, that Lopez had displayed none of the "warning signs" of being a "mere . . . puppet of the defense attorney." The court denied the motion to withdraw the guilty plea, and in accordance with Lopez's plea agreement, sentenced him to prison for 23 years 8 months.

Standard of Review

The withdrawal of a guilty plea rests "within the sound discretion of the trial court" and may not be disturbed on appeal unless the trial court has abused its discretion. (*People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796.) Abuse of discretion occurs where it is clearly shown (*id.* at p. 798) the trial court has exercised its discretion in an "arbitrary, capricious or patently absurd manner resulting in a manifest miscarriage of justice." (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.) The trial court has not abused its discretion if there is a reasonable inference to be drawn from the record that supports the order. (*People v. Harvey* (1984) 151 Cal.App.3d 660, 667.) "Where two conflicting inferences may be drawn from the evidence it is [the appellate court's] duty to adopt the one supporting the challenged order." (*People v. Savin* (1940) 37 Cal.App.2d 105, 108.)

Evaluation of Denial of the Motion to Withdraw

Section 1018 provides a guilty plea may be withdrawn at any time before judgment provided the defendant shows, by clear and convincing evidence, good cause for withdrawing the plea. (§ 1018; *People v. Cruz* (1974) 12 Cal.3d 562, 566.) Good cause may consist of " ' "mistake, ignorance, inadvertence or any factor that overcame the defendant's free exercise of judgment " ' " (*People v. Brotherton* (1966) 239 Cal.App.2d 195, 200.) For a plea to be valid, the defendant must have waived his or her rights voluntarily, knowingly, and intelligently.³ (*Brady v. U.S.* (1970) 397 U.S. 742, 748.) Although section 1018 must be liberally construed;⁴ "[a] plea may not be withdrawn simply because the defendant has changed his or her mind." (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.)

Here, the court found Lopez did not provide clear and convincing evidence of good cause to withdraw his guilty plea. Although mistakenly entering into a guilty plea may constitute good cause for withdrawing the plea, except for his own testimony the record does not support Lopez's claim. (See *People v. Huricks* (1995) 32 Cal.App.4th

³ A defendant must understand the nature of the charges, elements of offenses, pleas and defenses that may be available and punishment that may be expected before a trial judge accepts his or her waiver and plea. (*In re Birch* (1973) 10 Cal.3d 314, 319.)

⁴ Section 1018 provides:
"On application of the defendant at any time before judgment . . . the court may . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice."

1201, 1208 [requiring there be some evidence of the appellant's claim of good cause in the record itself].) Lopez testified he did not understand he was entering into a plea bargain, but "[i]n determining the true facts, the trial court is not bound by the uncontradicted statements of the defendant." (*People v. Brotherton, supra*, 239 Cal.App.2d at p. 201.)

The transcript of the plea hearing does not support Lopez's alleged confusion. At the plea hearing, Lopez answered in the affirmative when asked whether he understood that he was waiving his constitutional rights and whether he understood the terms of his sentence. Lopez also replied that he had no questions for the court, affirming his understanding of the proceedings. Additionally, Lopez was not unfamiliar with the criminal justice system, having previously been convicted of several crimes, including a serious felony.

Other testimony presented at the hearing on the motion to withdraw does not provide clear and convincing evidence to support Lopez's claim. Lopez's witness, Dr. Meyers, provided inconclusive testimony. Dr. Meyers did not personally evaluate Lopez's mental capacity at the time of the plea proceedings, and was unable to determine his mental state from reading the transcript of the plea proceedings. Although Dr. Meyers testified it would be best for someone with bipolar disorder to make decisions while on medication, she also said the decline in mental faculties would be "eventual" rather than immediate, requiring more than a day for an unmedicated patient to feel any

effect. Because Lopez stopped taking his medicine shortly before the plea proceedings, it is uncertain whether, and to what extent, his judgment was affected.

A trial court's factual findings are entitled to great weight with respect to witness credibility, " 'because of the [court's] "opportunity to . . . weigh their statements in connection with their manner on the stand. . . ." [Citation.]' " (*People v. Ledesma* (1987) 43 Cal.3d 171, 219.) Here, the trial court acknowledged Lopez had mental deficiencies. By observing Lopez's demeanor at the plea hearing, the court could reasonably find his mental deficiencies did not impair his judgment with respect to his guilty plea.

Additionally, granting Lopez's motion to withdraw his guilty plea on this record would lead the court down an ill-advised path. According to Dr. Meyers, it is not uncommon for defendants to forgo their medication on the day of trial. Allowing Lopez to excuse himself from being bound to his agreement because he voluntarily stopped taking his medication for one day opens an avenue for future defendants to purposefully enter into and then escape agreements with the court if they later change their minds. The court has an interest in preventing defendants from causing inconvenience, expense, and uncertainty. (See *People v. Waters* (1975) 52 Cal.App.3d 323, 331 [observing the requirement to show good cause reflects the rule that leave to withdraw a plea with resulting inconvenience and expense should not be lightly granted]; see also *People v. Hunt* (1985) 174 Cal.App.3d 95, 103 ["[g]uilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged"].) We conclude the

trial court did not abuse its discretion by denying Lopez's motion to withdraw his guilty plea.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.